

THE LAWS RELATING TO THE TIME, MANNER, AND PAYMENT OF WAGES



**State of California
Department of Industrial Relations (DIR)
Division of Labor Standards Enforcement (DLSE)**

For a complete listing of the DLSE offices in California, please check the list located in the back of this booklet.

For more detailed information and a complete listing of the California Labor Codes visit the DIR Web site at www.dir.ca.gov and click on *California Labor Code*

FREQUENTLY ASKED QUESTIONS

The following is a list of commonly asked questions regarding the time, manner, and payment of wages. For further information refer to the Department of Industrial Relations' Web site at www.dir.ca.gov.

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INTRODUCTION

The California Labor Code promotes and develops the welfare of the wage earners of California, to improve their working conditions and to advance their opportunities for profitable employment. This booklet focuses on the California Labor Code sections relating to the time, manner, and payment of wages, and is an informative guide of the important laws that affect the employee and employer. For the complete California Labor Code visit the Department of Industrial Relations Web site at www.dir.ca.gov

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2001 California Labor Code
Laws Relating to the Time, Manner, and Payment of Wages

§ 200. Definitions

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

§ 201. Discharge of employee; Immediate payment; Seasonal employment

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within such reasonable time as may be necessary for computation and payment thereof; provided, however, that such reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any such employee who so requests and designates a mailing address therefor.

§ 201.5. Payment of wages for employees laid off or discharged from production of motion pictures

An employer who lays off an employee engaged in the production of motion pictures, whose unusual or uncertain terms of employment require special computation in order to ascertain the amount due, shall be deemed to have made immediate payment of wages within the meaning of Section 201 if the wages of the employee are paid by the next regular payday, as prescribed by Section 204, following the layoff. For purposes of this section, "layoff" means the termination of employment of an employee where the employee retains eligibility for reemployment with the employer. For purposes of this section, "discharge" means the unconditional termination of employment of an employee. However, if an employee is discharged, payment of wages shall be made within 24 hours after discharge, excluding Saturdays, Sundays, and holidays. For purposes of this section, a payment required by this section may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on layoff and discharge of persons engaged in the production of motion pictures because their employment at various locations is often far removed from the employer's principal administrative offices and the unusual hours of their employment in this industry is often geared to the completion of a portion of a picture, which time of completion may have no relation to normal working hours.

§ 201.7. Discharge; Oil drilling business; Findings and declarations

An employer who lays off an employee or a group of employees engaged in the business of oil drilling shall be deemed to have made immediate payment within the meaning of Section 201 if the wages of such employees are paid within such reasonable time as may be necessary for computation or payment thereof; provided, however, that such reasonable time shall not exceed 24 hours after discharge excluding Saturdays, Sundays, and holidays; and provided further, such payment may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on discharge of employees engaged in oil drilling because their employment at various locations is often far removed from the employer's principal administrative offices, which makes the computation and payment of wages on an immediate basis unduly burdensome.

§ 202. Quitting employee; Payment within 72 hours; Notice of intention

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

§ 203. Willful failure to pay discharged or quitting employee; Penalty; 30-day limitation; Avoidance or refusal to receive payment; Time for filing suit for penalties

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment. Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.

If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days and this penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the violation of this section was unintentional. This penalty also shall not apply in any case in which an employee recovers the service charge authorized by Section 1719 of the Civil Code in an action brought by the employee thereunder.

§ 203.5. Continuance of claim for unpaid wages as penalty under bond

(a) If a bonding company issuing a bond which secures the payment of wages for labor or the surety on a bond willfully fails to pay, without abatement or reduction, any verified claim made for wages found to be due and payable, the claim for wages shall continue as a penalty against the bonding company or surety from the date on which demand for payment was made at the same rate until paid as the wages upon which the claim is based, except that the claim shall not continue as a penalty for more than 30 days.

(b) This section shall not apply to contractor's bonds required pursuant to Section 7071.6 of the Business and Professions Code.

§ 204. Semi-monthly payment; Designation of regular paydays; Executive, administrative, and professional employees; Arrangements under collective bargaining agreements

All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for

between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13 (a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time. Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

§ 204a. Employees working for several employers interchangeably; Payment at central place and under unified pay schedule; Notice of intent to set up or abandon plan

When workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers, or some of them, cooperate to establish a plan for the payment of wages at a central place or places and in accordance with a unified schedule of pay days, all the provisions of this chapter except 201, 202, and 208 shall apply. All such workers, including those who have been discharged and those who quit, shall receive their wages at such central place or places.

This section shall not apply to any such plan until 10 days after notice of their intention to set up such a plan shall have been given to the Labor Commissioner by the employers who cooperate to establish the plan. Having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the Labor Commissioner by the employers intending to abandon the plan.

§ 204b. Applicability of § 204 to employees paid on weekly basis on regular day; Requirements of payments

Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

§ 204c. Applicability of § 204 to certain executive, administrative, or professional employees.

Section 204 shall be inapplicable to executive, administrative or professional employees who are not covered by any collective bargaining agreement, who are not subject to the Fair Labor Standards Act, whose monthly remuneration does not include overtime pay, and who are paid within seven days of the close of their monthly payroll period.

§ 204.1. Commissions paid to employee of vehicle dealer; Time for payment; Effect of collective bargaining agreement

Commission wages paid to any person employed by an employer licensed as a vehicle dealer by the Department of Motor Vehicles are due and payable once during each calendar month on a day designated in advance by the employer as the regular payday. Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof.

The provisions of this section shall not apply if there exists a collective bargaining agreement between the employer and his employees which provides for the date on which wages shall be paid.

§ 204.2. Monthly payment; Executive, administrative, and professional employees; Effect of collective bargaining agreement

Salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13 (a)(1) of the Fair Labor Standards Act of 1938, as amended through March 1, 1969, (Title 29, Section 213 (a)(1), United States Code) in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads, earned for labor performed in excess of 40 hours in a calendar week are due and payable on or before the 26th day of the calendar month immediately following the month in which such labor was performed. However, when such employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements will apply to the covered employees.

§ 205. Farm workers and domestic help boarded and lodged by employer; Payment periods

In agricultural, viticultural, and horticultural pursuits, in stock or poultry raising, and in household domestic service, when the employees in such employments are boarded and lodged by the employer, the wages due any employee remaining in such employment shall become due and payable once in each calendar month on a day designated in advance by the employer as the regular payday. No two successive paydays shall be more than 31 days apart, and the payment shall include all wages up to the regular payday. Notwithstanding the provisions of this section, wages of workers employed by a farm labor contractor shall be paid on payroll periods at least once every week on a business day designated in advance by the farm labor contractor. Payment on such payday shall include all wages earned up to and including the fourth day before such payday.

§ 205.5. Payment of wages earned by agricultural employee; Payment periods

All wages, other than those mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are due and payable twice during each calendar month, on days designated in advance by the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the month during which the labor was performed. Labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid between the first and the seventh day of the following month. Agricultural employees, as used in this section, shall not include those employees who are covered by Section 205.

§ 206. Payment of amount conceded due in case of dispute; Remedies of employee; Time for payment of claim after determination of validity by Commissioner; Penalty

(a) In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.

(b) If, after an investigation and hearing, the Labor Commissioner has determined the validity of any employee's claim for wages, the claim is due and payable within 10 days after receipt of notice by the employer that such wages are due. Any employer having the ability to pay who willfully fails to pay such wages within 10 days shall, in addition to any other applicable penalty, pay treble the amount of any damages accruing to the employee as a direct and foreseeable consequence of such failure to pay.

§ 206.5. Prohibition against, and invalidity of, release of claim for wages; Violation as misdemeanor

No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.

Any release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee and the violation of the provisions of this section shall be a misdemeanor.

§ 207. Notice of paydays and time and place of payment; Posting

Every employer shall keep posted conspicuously at the place of work, if practicable or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, in accordance with this article.

§ 208. Place and manner of payment

Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

§ 209. Striking employees; Payment of earned wages; Return of deposit or guaranty

In the event of any strike, the unpaid wages earned by striking employees shall become due and payable on the next regular payday, and the payment or settlement thereof shall include all amounts due the striking employees without abatement or reduction. The employer shall return to each striking employee any deposit, money, or other guaranty required by him from the employee for the faithful performance of the duties of the employment.

§ 210. Penalty for failure to pay; Recovery; Disposition of money recovered

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(a) For any initial violation, fifty dollars (\$50) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, one hundred dollars (\$100) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. All money recovered therein shall be paid into the State Treasury to the credit of the General Fund.

§ 212. Instruments issued in payment; Requisites; Sufficiency of funds for payment; Instruments redeemable in merchandise; Protest or dishonor

(a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

§ 213. Limitations upon effect and applicability of § 212

Nothing contained in Section 212 shall:

(a) Prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessities of life or for the tools and implements used by the employee in the performance of his duties.

(b) Apply to counties, municipal corporations, quasi municipal corporations or school districts.

(c) Apply to students of nonprofit schools, colleges, universities, and other nonprofit educational institutions.

(d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association or credit union of the employee's choice in this state, provided the employee has voluntarily authorized such deposit. If an employer discharges an employee or the employee quits such voluntary authorization for deposit shall be deemed terminated and the provisions of this article relating to payment of wages upon termination of employment shall apply.

§ 214. Place of prosecution under § 212

Prosecution under Section 212 may be brought either at the place where the alleged illegal order, check, draft, note, memorandum or other acknowledgment of wage indebtedness is issued or at the place where it is made payable.

§ 215. Misdemeanors; Violation of sections governing time, place and manner of payment of wages; Prima facie evidence

Any person, or the agent, manager, superintendent or officer thereof, who violates any provision of Sections 204, 204b, 205, 207, 208, 209, or 212 is guilty of a misdemeanor. Any failure to keep posted any notice required by Section 207 is prima facie evidence of a violation of such sections.

§ 216. Acts constituting misdemeanor; Refusal to pay wages; False denial of amount or validity of wages

In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

(a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay or defraud, the person to whom such indebtedness is due.

§ 218. Authority of district or prosecuting attorney not limited; Suit by wage claimant

Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.

§ 218.5. Attorney's fees and costs

In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner. This section shall not apply to a surety issuing a bond pursuant

to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code or to an action to enforce a mechanics lien brought under Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code.

This section does not apply to any action for which attorney's fees are recoverable under Section 1194.

§ 218.6. Award of Interest

In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

§ 219. More frequent or greater payment not prohibited; Article not to be contravened by agreement

Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied.

§ 220. Sections inapplicable to public employees

(a) Sections 201.5, 201.7, 203.1, 203.5, 204, 204a, 204b, 204c, 204.1, 205, and 205.5 do not apply to the payment of wages of employees directly employed by the State of California. Except as provided in subdivision (b), all other employment is subject to these provisions.

(b) Sections 200 to 211, inclusive, and Sections 215 to 219, inclusive, do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation. All other employments are subject to these provisions.

§ 221. Collection or receipt of wages previously paid

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

§ 222. Withholding part of wages established by collective bargaining

It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either willfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.

§ 222.5. Withholding fee for medical or physical examinations

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

§ 223. Secret payment of wage lower than designated scale

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

§ 224. Withholding or diverting portion of wages under law or written authorization

The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance

premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Nothing in this section or any other provision of law shall be construed as authorizing an employer to withhold or divert any portion of an employee's wages to pay any tax, fee or charge prohibited by Section 50026 of the Government Code, whether or not the employee authorizes such withholding or diversion.

§ 225. Unlawful receipt or withholding of wages; Secret payment of wage below scale

The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor.

§ 225.5. Penalty for failure to pay; Recovery; Disposition of money

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, fifty dollars (\$50) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, one hundred dollars (\$100) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. All money recovered therein shall be paid into the State Treasury to the credit of the General Fund.

§ 226. Itemized statement to employees; Contents; Damages; Exemptions

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by this section shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(b) Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees.

c) This section does not apply to the state, or any city, county, city and county, district, or any other governmental entity.

§ 226.3. Employer subject to civil penalty

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

§ 226.6. Additional punishment for violation of sections governing itemized wage statement

Any employer who knowingly and intentionally violates the provisions of Section 226 or 226.2, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 or 226.2 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law.

§226.7. Meal or rest period

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

§ 227.3. Payment for vested vacation time on termination of employment

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

§ 229. Maintenance of actions despite private agreement to arbitrate; Application of section

Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate. This section shall not apply to claims involving any dispute concerning the interpretation or application of any collective bargaining agreement containing such an arbitration agreement.

§ 231. Employer's payment of costs of physical examination for driver's license

Any employer who requires, as a condition of employment, that an employee have a driver's license shall pay the cost of any physical examination of the employee which may be required for issuance of such license, except where the physical examination was taken prior to the time the employee applied for such employment with the employer.

§ 232. Prohibition against requiring employee to refrain from disclosing amount of wages

No employer shall do any of the following:

- (a) Require, as a condition of employment, that any employee refrain from disclosing the amount of his or her wages.
- (b) Require any employee to sign a waiver or other document which purports to deny the employee the right to disclose the amount of his or her wages.
- (c) Discharge, formally discipline, or otherwise discriminate against, for job advancement, an employee who discloses the amount of his or her wages.

§ 233. Sick leave to attend family

(a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to attend to an illness of a child, parent, or spouse of the employee. All conditions and restrictions placed by the employer upon the use by an employee of sick leave also shall apply to the use by an employee of sick leave to attend to an illness of his or her child, parent, or spouse. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) "Child" means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

(2) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(4) "Sick leave" means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the following reasons:

A) The employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the employee.

(B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee.

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination. "Sick leave" does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.

(c) No employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness of a child, parent, or spouse of the employee.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce the provisions of this section in accordance with the provisions of Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law.

§ 240. Deposit of bond upon nonpayment of wages

(a) If any employer has been convicted of a violation of any provision of this article, or if any judgment against an employer for nonpayment of wages remains unsatisfied for a period of 10 days after the time to appeal therefrom has expired, and no appeal therefrom is then pending, the Labor Commissioner may require the employer to deposit a bond in such sum as the Labor Commissioner may deem sufficient and adequate in the circumstances, to be approved by the Labor Commissioner. The bond shall be payable to the Labor Commissioner and shall be conditioned that the employer shall, for a definite future period, not exceeding six months, pay the employees in accordance with the provisions of this article, and shall be further conditioned upon the payment by the employer of any judgment which may be recovered against the employer pursuant to the provisions of this article.

(b) If within 10 days after demand for the bond, which demand may be made by mail, the employer fails to deposit the bond, the Labor Commissioner may bring an action in the name and on the behalf of the people of the State of California against the employer in a court of competent jurisdiction to compel the employer to furnish the bond or to cease doing business until the employer has done so. The employer has the burden of proving either that the bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond, and that the bond is reasonably necessary or proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with the provisions of this article, the court may enjoin the employer, whether an individual, partnership, corporation, company, trust, or association, and such other person or persons as may have been or may be concerned with or in any way participating in the failure to pay the wages resulting in the conviction or in the judgment, from doing business until the requirement is met, and make other and further orders appropriate to compel compliance with the requirement.

§350. Definitions

As used in this article, unless the context indicates otherwise:

(a) "Employer" means every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.

(b) "Employee" means every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.

(c) "Employing" includes hiring, or in any way contracting for, the services of an employee.

(d) "Agent" means every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees.

(e) "Gratuity" includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity. (f) "Business" means any business establishment or enterprise, regardless of where conducted.

§351. Collecting, taking, or receiving gratuity by employer; Deduction from or credit against wages; Gratuity as sole property of employee; Application of section

No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

§ 353. Records

Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of § 1197. Requirement that minimum wage be paid deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.

§ 354. Violation as misdemeanor; Punishment

Any employer who violates any provision of this article is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not exceeding 60 days, or both.

§ 510. “Day's work”; Hours

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

§ 512. Meal Periods

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

§ 1197. Requirement that minimum wage be paid

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

§ 1197.1. Civil penalty for payment of wage less than legal minimum; Service of citation; Request for hearing; Entry of judgment

Note: This is a portion of Labor Code § 1197.1 Please refer to the Labor Code for its entirety.

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

§2802. Indemnification of employee for expenditures or losses in discharge of duties or obedience to directions

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

Workers' Compensation Insurance

§ 3700. Securing payment of compensation

Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

§ 3711. Statement by employer showing name of insurer or compliance with requirement to secure compensation

The director may, at any time, require any employer to furnish a written statement showing the name of his or her insurer or the manner in which the employer has complied with the provisions of Section 3700. Failure of the employer for a period of 10 days to furnish the written statement is prima facie evidence that he or she has failed or neglected in respect to the matters so required. The 10-day period shall not be construed to allow an uninsured employer, so found by the director, any extension of time from the application of the provisions of Section 3710.1. An insured employer who fails to respond to an inquiry respecting his or her status as to his or her workers' compensation security shall be assessed and required to pay a penalty of five hundred dollars (\$500) to the director for deposit in the State Treasury to the credit of the Uninsured Employers Fund. In any prosecution under this article, the burden of proof is upon the defendant to show that he or she has secured the payment of compensation in one of the two ways set forth in Section 3700.

Amends General
Minimum Wage Order
and IWC Industry and
Occupation Orders

Please Post Next to Your IWC Industry or Occupation Order

OFFICIAL NOTICE

California Minimum Wage

MW-2001

Minimum Wage - Every employer shall pay to each employee wages not less than the following:

\$6.25
per hour beginning January 1, 2001

\$6.75
per hour beginning January 1, 2002

To employers and representatives of persons working in industries and occupations in the State of California:

SUMMARY OF ACTIONS

TAKE NOTICE that on October 23, 2000, the Industrial Welfare Commission (IWC), having proceeded according to its authority in the Labor Code and Constitution of California, Article 14, § 1, amended Sections 1, 2, 3, and 5 of the General Minimum Wage Order, MW-98. Section 4, Separability, has not been changed. The IWC adopted increases to the minimum wage and to meals and lodging credits in this general minimum wage order and in all of the IWC's industry and occupation orders. The IWC also repealed and/or amended the following non-statutory full and partial exemptions from the minimum wage for certain employees that are contained in this order as well as in its industry and occupation orders: student nurses, professional actors, full-time carnival ride operators, employees of the State or local governments and any political subdivision thereof, personal attendants in private homes except for persons under the age of eighteen who are employed as baby sitters for a minor child of the employer in the employer's home, and minors paid not less than 85% of the minimum wage rounded to the nearest nickel. The present partial exemption for learners was amended to include minors. The IWC took these actions after holding investigative public hearings as required by Labor Code § 1178, considering the report of the Wage Board on the minimum wage selected pursuant to Labor Code § 1178.5, and subsequently holding public hearings according to the requirements of Labor Code § 1181.

This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained at www.dir.ca.gov/IWC or by mail from the IWC.

1. APPLICABILITY

The provisions of this Order shall not apply to outside salespersons and individuals who are the parent, spouse, or children of the employer previously contained in this Order and the IWC's industry and occupation orders. The IWC has eliminated other exemptions from the minimum wage previously contained in this Order and in sections of the IWC's industry and occupation orders. (See Section 5, Amended Provisions, below.) Exceptions and modifications provided by statute or in Section 1, Applicability, and in other sections of the IWC's industry and occupation orders may be used where any such provisions are enforceable and applicable to the employer.

2. MINIMUM WAGES

Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked, effective January 1, 2002.

3. MEALS AND LODGING

Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2001	Effective January 1, 2002
LODGING		
Room occupied alone	\$29.40 per week	\$31.75 per week
Room shared	\$24.25 per week	\$26.20 per week
Apartment — two-thirds (2/3) of the ordinary rental value, and in no event more than: ...	\$352.95 per month	\$381.20 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than:	\$522.10 per month	\$563.90 per month
MEALS		
Breakfast	\$2.25	\$2.45
Lunch	\$3.10	\$3.35
Dinner	\$4.15	\$4.50

4. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Order should be held invalid, unconstitutional, unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

5. AMENDED PROVISIONS

This Order amends the minimum wage and meals and lodging credits in MW-98, as well as in the IWC's industry and occupation orders. (See Orders 1-15, Secs. 4 and 10; and Order 16, Secs. 4 and 9.) This Order also amends the following other provisions of the IWC's industry and occupation orders to be consistent with the IWC's actions regarding the elimination of certain exemptions from the minimum wage: Order 1, Secs. 1(B) and 4(A)(1) and (2); Order 2, Secs. 1(B) and 4(A)(1) and (2); Order 3, Secs. 1(B) and 4(A)(1) and (2); Order 4, Secs. 1(B) and 4(A)(1) and (2); Order 5, Secs. 1(A) and (C), and 4(A)(1) and (2); Order 6, Secs. 1(B) and 4(A)(1) and (2); Order 7, Secs. 1(B) and 4(A)(1) and (2); Order 8, Secs. 1(B) and 4(A)(1) and (2); Order 9, Secs. 1(B) and 4(A)(1) and (2); Order 10, Secs. 1(B) and (D), and 4(A)(1) and (2); Order 11, Secs. 1(B) and (C) and 4(A)(1) and (2); Order 12, Secs. 1(B) and (C) and 4(A)(1) and (2); Order 13, Secs. 1(B) and 4(A)(1) and (2); Order 14, Secs. 1(B) and 4(A)(1) and (2); Order 15, Secs. 1(B) and 4(A)(1) and (2); and, Order 16, Sec. 1(B). These amendments were adopted on October 23, 2000, in Sacramento.

These Amendments to the Wage Orders shall be in effect as of January 1, 2001.

Questions about enforcement should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, Eureka, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, and Van Nuys.

DIVISION OF LABOR STANDARDS ENFORCEMENT
OFFICE ADDRESSES

Bakersfield. 5555 California Avenue, Suite 200, Bakersfield, CA 93309
El Centro. 1550 West Main Street, El Centro, CA 92243
Eureka. 619 Second Street, Room 109, Eureka, CA 95501
Fresno. 770 East Shaw Avenue, Suite 315, Fresno, CA 93710
Long Beach. 300 Oceangate, Suite 302, Long Beach, CA 90802
Los Angeles. 320 West 4th Street, Suite 450, Los Angeles, CA 90013
Oakland. 1515 Clay Street, Suite 801, Oakland, CA 94612.
Redding. 2115 Civic Center Drive, Room 17, Redding, CA 96001
Sacramento. 2031 Howe Street, Suite 100, Sacramento, CA 95825
Salinas. 1870 North Main Street, Suite 150, Salinas, CA 93906
San Bernardino. 464 West Fourth Street, Room 348, San Bernardino, CA 92401
San Diego. 7575 Metropolitan Drive, Room 210, San Diego, CA 92108
San Francisco. 455 Golden Gate Avenue. 8th Floor, San Francisco, CA 94142-3660
San Jose. 100 Paseo de San Antonio, Room 120, San Jose, CA 95113
Santa Ana 28 Civic Center Plaza, Room 625, Santa Ana, CA 92701
Santa Barbara. 411 East Canon Perdido Street, Room 3, Santa Barbara, CA 93101
Santa Rosa. 50 "D" Street, Suite 360, Santa Rosa, CA 95404
Stockton. 31 East Channel Street, Room 317, Stockton, CA 95202
Van Nuys. 6150 Van Nuys Boulevard, Room 206, Van Nuys, CA 91401